Restriction Requirement pg 2 [emphasis added]. The Applicant traverses this request for a species election. First, the Examiner has admitted that the various MMP peptides are structurally related (see above underlining) and that the disclosed MMP peptides are related derivatives:

> In particular, the MMP peptides may be derivatives of MPP1, MMP2, MMP7, and other MMP peptides.

Restriction Requirement pg 2. Clearly, the Examiner believes that these MMP peptides have structural similarity.

Second, the Examiner has not shown an "undue search burden". The Examiner states that "A separate search of the art is necessary since the amino acid sequences are different from one another". *Restriction Requirement pg. 2.* The Applicants point out that by using the available computer databases (i.e., for example, PubMed, EMBL etc) such searches for different sequences may be done in seconds. This does not comport with what Congress meant by "undue search burden". Further, USPTO policy allows examination of up to ten (10) sequences in the same application without becoming an "undue search burden":

> ... decided *sua sponte* to partially waive the requirements of 37 CFR 1.141 et seq and permit a reasonable number of such nucleotide sequences to be claimed in a single application [1192 O.G. 68 (November 19, 1996)]. It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single application without restriction.

MPEP 803.4 Nucleotide Sequences [emphasis added]. Clearly, the Examiner is not following this official policy. The Examiner is reminded that PTO decisions are reviewed using the standard set forth in the *Administrative Procedure Act*, 5 U.S.C. § 706. *Dickinson v. Zurko*, 527 U.S. 150, 154 (1999). Under that statute, actions are set aside that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Moreover, factual findings are set aside that are unsupported by substantial evidence. *In re McDaniel*, 293 F.3d 1379, 1382 (Fed. Cir. 2002).

The Applicants respectfully request that the Examiner reconsider the request for a species election.

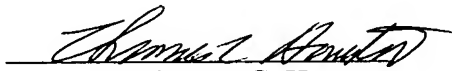
II. Default Election

The Applicants provide an election of the Examiners' offered groups only because required to do so under 35 U.S.C. § 121. If the Examiner decides not to reconsider the species election, the Applicants choose MMP1 for examination.

CONCLUSION

Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicant encourages the Examiner to call the undersigned collect at 617.984.0616.

Date: October 25, 2006

By: 

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